

# **EXHIBIT 26**

1 UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
3 ASHEVILLE DIVISION

4 SANDRA M. PETERS, on : Case No.  
5 behalf of herself and :  
6 all others similarly : 1:15-cv-00109-MR  
7 situated, :  
8 Plaintiff, :

9 vs. :

10 AETNA INC., AETNA LIFE :  
11 INSURANCE COMPANY, and :  
12 OPTUMHEALTH CARE :  
13 SOLUTIONS INC., :  
14 Defendants. :

15 - - -  
16 March 1, 2018

17 CONFIDENTIAL - ATTORNEYS' EYES ONLY  
18 - - -

19 Videotape 30(b)(6) deposition of  
20 Aetna, through JENNIFER ALLISON CROSS  
21 HENNIGAN, held at the offices of Elliott  
22 Greenleaf, 925 Harvest Drive, Suite 300,  
23 Blue Bell, Pennsylvania 19422, beginning at  
24 9:11 a.m., before LINDA ROSSI-RIOS, a  
Public.

[REDACTED]

8 MR. SIGLER: Objection to form.  
9 Go ahead.

[REDACTED]

20 BY MR. KNOTT:

[REDACTED]

[REDACTED]

4 MR. SIGLER: We're going to  
5 object to that as calling for  
6 privileged information and direct the  
7 witness not to answer.

8 BY MR. KNOTT:

9 Q. Are you going to follow your  
10 counsel's instruction?

11 A. I am.

[REDACTED]

[REDACTED]

10 Q. How many different types of  
11 plans does Aetna have?

12 MR. SIGLER: Objection to form.  
13 Foundation. Beyond the scope of the  
14 notice.

15 THE WITNESS: Just in context  
16 of this, I reviewed a number of  
17 different types of plan -- you know,  
18 plans and plan documents.

19 BY MR. KNOTT:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8 MR. SIGLER: Objection. Form.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14 BY MR. KNOTT:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24 Q. Let's talk a little more about

[illegible]

Case 1:15-cv-00109-MR Document 144-28 Filed 08/03/16 Page 8 of 22



24

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17 BY MR. KNOTT:


22 MR. SIGLER: Objection. Form.  
23 Foundation. Outside the scope of the  
24 notice.

[REDACTED]

12 - - -

13 (Exhibit 6, Provider Agreement,  
14 AETNA-PETERS-00001648 - 00001749, was  
15 previously marked for identification.)

16 - - -

17 BY MR. KNOTT:

18 Q. I'm going to hand you what's  
19 previously been marked as Exhibit 6.

20 MR. KNOTT: And we'll have  
21 Exhibits 122, 123 and 124.

22 - - -

23 (Exhibit 122, Contract Oversight  
24 Claims Management Agreement,

1           therapist as part of OptumHealth Care  
2           Solutions. It's listed as -- you  
3           know, Optum Healthcare is listed as  
4           well.

5       BY MR. KNOTT:

6           Q.       And then it goes on to say,  
7       "Additionally, each contracted provider is  
8       listed under the OptumHealth POIN of 55132  
9       for the purposes of claims billed by  
10      OptumHealth for payment."

11                   Did I read that correctly?

12           A.       Correct.

13           Q.       What is a POIN?

14           A.       We at Aetna refer to it as a  
15      POIN. It's really basically a hierarchy of  
16      identifying providers in an organization  
17      such as Optum and giving it -- and tying it  
18      to an identifiable number like 55132.

19           Q.       Under the header  
20      "Reimburse/Contract Methodology" it says,  
21      "Case rate reimbursement to OptumHealth."

22                   Did I read that correctly?

23           A.       Yes.

24           Q.       The case rate reimbursement is

1 the per visit rate we've talked about.

2 Correct?

3 A. Yes.

4 Q. There's not a different  
5 methodology described here for different  
6 plans. Is that correct?

7 A. Correct.

8 Q. Exhibit 125 relates to physical  
9 and occupational therapy. Correct?

10 A. Yes.

11 - - -

12 (Exhibit 126, Network Reference  
13 Tool, AETNA-PETERS-00003096 - 00003099,  
14 was marked for identification.)

15 - - -

16 BY MR. KNOTT:

17 Q. The court reporter has handed  
18 you what's been marked as Exhibit 126,  
19 AETNA-PETERS-00003096. Just let me know  
20 when you're ready.

21 A. Okay.

22 Q. What is Exhibit 126?

23 A. This is the NRT page for the  
24 Optum chiropractic arrangement for North

1 Responses to Plaintiff's First Set of  
2 Interrogatories Numbers 3 and 9. Do you see  
3 that?

4 A. Yes.

5 Q. And looking at the page  
6 number 11 with the certification, is that  
7 your signature there?

8 A. Yes, it is.

9 Q. Is it Aetna's position that it  
10 was permitted under the terms of its plans  
11 to treat Optum's per visit rate as a covered  
12 expense?

13 A. I think as we outlined here,  
14 all of the various provisions that Aetna has  
15 among other varying plan summary documents  
16 and Administrative Services Agreements that  
17 speaks to Aetna's network and what's a  
18 network provided and what's a negotiated  
19 charge, that, yes, we're able to enter into  
20 a project with Optum.

21 Q. And treat Optum's per visit  
22 rate as a covered expense. Right?

23 A. It's the negotiated charge.  
24 And depending on, again, the plan summary

1 document or language, how that would be back  
2 to being a covered expense.

3 Q. Is there any other language in  
4 the summary plan description for Ms. Peters'  
5 plans that Aetna believes allows it to treat  
6 Optum's per visit rate as a covered expense?

7 A. I don't believe we went through  
8 the plan summary document today. I'd have  
9 to go through it, you know, end to end, read  
10 end to end thoroughly to explain that. But  
11 my general understanding is, you know, these  
12 are the provisions that speak to that.

13 - - -

14 (Exhibit 133, Health Care Plan  
15 Summary Plan Description,  
16 AETNA-PETERS-00002946 - 00003017, was  
17 marked for identification.)

18 - - -

19 BY MR. KNOTT:

20 Q. I've handed you what's been  
21 marked as Exhibit 133, Bates-numbered  
22 AETNA-PETERS-00002946 on the first page.  
23 Just let me know when you're ready.

24 A. Okay.

1 Q. Do you recognize Exhibit 133?

2 A. I do.

3 Q. What is it?

4 A. This is the Mars plan summary  
5 document that they share with their employees.

6 Q. Is there anything else in this  
7 document that Aetna relies on for its  
8 position that it was able to treat Optum's  
9 per visit rate as a covered expense aside  
10 from what's listed in the Interrogatory  
11 response that we looked at?

12 MR. SIGLER: Objection to form.

13 THE WITNESS: I would say for  
14 this specific document, that these  
15 are the specific glossary items that  
16 support the Optum arrangement, yes.

17 BY MR. KNOTT:

18 Q. And you're not aware of any  
19 other provisions in here upon which Aetna  
20 relies to support that arrangement. Is that  
21 correct?

22 A. Well, I'm not a lawyer, but,  
23 no, I mean, these are the two -- three  
24 primary, I would say, glossary definitions.



1 They explain it.

2 Q. Looking at page 3013 there's  
3 the definition of negotiated charge. Do you  
4 see that?

5 A. Uh-huh.

6 Q. It's defined one way "As to  
7 health expense coverage, other than  
8 Prescription Drug expense coverage," and  
9 it's defined another way "As to Prescription  
10 Drug expense coverage."

11 Do you see that?

12 A. Yes, I see that.

13 Q. And then the discussion of  
14 prescription drug expense coverage there's  
15 mention of a third-party vendor. Do you see  
16 that?

17 A. Yes, I see that.

18 Q. There's no reference to  
19 third-party vendors in that definition for  
20 other than prescription drug expense  
21 coverage. Do you see that?

22 A. Yes, I see that.

23 Q. Is that -- is Optum a  
24 third-party vendor?

1           A.       No, I think we've established  
2       that Optum is a network provider and that's  
3       what is listed here under the negotiated  
4       charge.

5           Q.       So it's Optum -- it's Aetna's  
6       position that Optum is a network provider as  
7       defined in this summary plan description.  
8       Is that correct?

9           A.       Yes.   Optum is the network  
10      provider.

11          Q.       And that's why Aetna takes the  
12      position that it can treat Optum's per visit  
13      rate as a covered expense under this plan.  
14      Is that right?

15                   MR. SIGLER:   Objection to form.

16                   THE WITNESS:   Again, I think I  
17      answered that that Aetna -- Optum is  
18      a network provider, a participating  
19      network provider and the negotiated  
20      charge Aetna has with Optum, the per  
21      visit rate, per diem rate, is a  
22      covered expense.

23      BY MR. KNOTT:

24          Q.       This plan covers healthcare

1 deductibles?

2 MR. SIGLER: Objection to form.

3 MR. BOONE: Same objection.

4 THE WITNESS: Can you repeat  
5 that question?

6 BY MR. KNOTT:

7 Q. Let's say, for example, in this  
8 circumstance Aetna describes its contracted  
9 charge with Optum as \$70.89. Correct?

10 A. Yes.

11 Q. And it says that Optum has a  
12 contracted rate with the service provider of  
13 \$36. Right?

14 A. Yes.

15 Q. Is it Aetna's position that  
16 Optum would not be entitled to collect the  
17 full \$70.89 charge from members who owe  
18 deductibles?

19 MR. SIGLER: Objection to form.

20 MR. BOONE: Same objection.

21 THE WITNESS: You know what, I  
22 can't -- I mean, I think this -- I  
23 would have to look at, you know,  
24 claim by claim to explain or

1 understand how it was adjudicated and  
2 communicated back to -- back to the  
3 member as well as Optum. But, you  
4 know, I think as I explained earlier  
5 in the day, that there could be a  
6 number of reasons why, you know, the  
7 rate paid to Optum would not have a  
8 component that Optum retains before  
9 paying their downstream provider.  
10 And a deductible example, a full  
11 deductible example is one of those  
12 scenarios.

13 BY MR. KNOTT:

14 Q. So in the deductible scenario,  
15 Optum has a contracted rate with a service  
16 provider of \$36, and its -- Optum's  
17 contracted charge with Aetna is \$70.89. Is  
18 Optum entitled to collect the difference,  
19 the \$70.89 minus the \$36?

20 MR. BOONE: Objection to the  
21 form.

22 MR. SIGLER: Same objection.  
23 Asked and answered.

24 THE WITNESS: Again, if the

1 member -- Optum as a general  
2 practice, my understanding, does not  
3 collect copayments or deductibles  
4 from members. The treating  
5 provider -- they communicate to the  
6 treating provider what to collect.  
7 So in this scenario, in this claim  
8 example, they clearly had  
9 communicated the \$36 that the  
10 treating provider would collect.  
11 It's -- you know, in this example, no  
12 money was paid by Aetna. The member  
13 was fully responsible. And we have  
14 no -- even if Optum tells the  
15 treating provider what they can  
16 collect, we have no idea, you know,  
17 confirmation on what the treating  
18 provider collects. If they collect  
19 \$36, if they collect less, we  
20 wouldn't know that.

21 BY MR. KNOTT:

22 Q. Looking at the paragraph two  
23 down from that, the first sentence says,  
24 "Ms. Peters is correct that the \$14.18

1 cost-share in this situation is more than  
2 20 percent of the actual charge for the  
3 services."

4 Did I read that correctly?

5 A. Yes.

6 Q. Is that a correct statement?

7 MR. SIGLER: Objection to form.  
8 Foundation.

9 MR. BOONE: Same objections.

10 THE WITNESS: Well, Aetna  
11 considers the Optum per the diem rate  
12 as a negotiated rate. And Aetna  
13 calculates coinsurance off of  
14 negotiated rates. So this 14 -- I  
15 don't have a calculator, but this  
16 14.18 appears to be the 20 percent of  
17 the \$70.89 which is the Optum/Aetna  
18 negotiated rate. And Optum is our  
19 network provider, so it was -- the  
20 coinsurance was applied off of the  
21 contracted rate with our network  
22 provider.

23 BY MR. KNOTT:

24 Q. So if I'm understanding you